

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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December 03, 2008

### LEGEND:

Parent =

Shareholder A =

Shareholder B =

Acquiring =

Target =

a =

b =

Dear :

This letter responds to your October 22, 2008 request for rulings on certain federal income tax consequences of a series of proposed transactions. The information submitted in that request is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations and other data may be required as part of the audit process.

### **Summary of Facts**

Parent is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the "Group"). Parent owns a% of the stock of Target, which is a member of the Group. Shareholder A and Shareholder B each own b% of the stock of Target. Target is a holding company that wholly owns Acquiring.

### **Proposed Transaction**

For what have been represented to be valid business purposes the following steps have been proposed (the "Merger"):

- (i) Acquiring forms LLC, an entity disregarded as separate from its owner under Treas. Reg. § 301.7701-3.
- (ii) Pursuant to state law, Target merges forward into LLC and Target ceases to exist.
- (iii) The Merger will be treated as if Target merges with and into Acquiring for Acquiring stock.

### **Representations**

The following representations are made in connection with the Merger:

- (a) The fair market value of Acquiring common stock received in the Merger by Parent, Shareholder A, and Shareholder B (together, the "Shareholders") will be approximately equal to the fair market value of Target common stock surrendered in the Merger.
- (b) At least 40% of the proprietary interest in Target will be exchanged for Acquiring common stock and will be preserved (within the meaning of Treas. Reg. § 1.368-1(e)).

(c) Neither Acquiring nor any person related to Acquiring (within the meaning of Treas. Reg. § 1.368-1(e)(3)) has any plan or intention to reacquire any Acquiring common stock issued in the transaction for any consideration other than Acquiring common stock.

(d) Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the transaction, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C) or described in Treas. Reg. § 1.368-2(k).

(e) The liabilities of Target assumed by Acquiring were incurred by Target in the ordinary course of business and are associated with the assets transferred.

(f) Following the Merger, Acquiring will continue the historic business of the Target or use a significant portion of the historic business assets of the Target in a business.

(g) Acquiring, Target and the Shareholders each will pay their respective expenses, if any, incurred in connection with the Merger.

(h) There is no intercorporate indebtedness existing between Acquiring and Target that was or will be issued, acquired or settled at a discount.

(i) No two parties to the Merger are investment companies as defined in § 368(a)(2)(F)(iii) and (iv) of the Code.

(j) Target is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A) of the Code.

(k) The fair market value of the assets of Target to be transferred to Acquiring will equal or exceed the sum of liabilities assumed by Acquiring.

### **Rulings**

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Merger:

(1) The Merger as described above will qualify as a reorganization within the meaning of § 368(a)(1)(A). Acquiring and Target will each be “a party to the reorganization” within the meaning of § 368(b).

(2) Target will not recognize gain or loss upon the transfer of the assets of Target to Acquiring solely in exchange for Acquiring common stock and the assumption of liabilities by Acquiring (§§ 361(a) and 357(a)).

(3) Acquiring will not recognize gain or loss upon Acquiring's receipt of Target's assets in exchange for shares of Acquiring common stock (§ 1032(a)).

(4) The basis of Target's assets in the hands of Acquiring will be the same as the basis of such assets in the hands of Target immediately before the Merger (§ 362(b)).

(5) The holding period of Target's assets in the hands of Acquiring will include the period during which Target held such assets (§ 1223(2)).

(6) No gain or loss will be recognized by the Shareholders who receive solely Acquiring common stock in exchange for their Target common stock (§ 354(a)(1)).

(7) The basis of Acquiring common stock received by the Shareholders will be the same as the basis of the Target common stock surrendered in exchange therefore (§ 358(a)(1)).

(8) The holding period of Acquiring common stock received by the Shareholders will include the period during which the Target common stock surrendered in exchange therefore was held, provided the Target common stock was held as a capital asset on the date of the exchange (§ 1223(1)).

(9) Acquiring will succeed to and take into account, as of the close of the effective date of the Merger, the items of Target described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations hereunder (Treas. Reg. § 1.381(a)-1).

### **Caveats**

We express no opinion about the tax treatment of the Merger under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Merger that are not specifically covered by the above rulings.

### **Procedural Statements**

The ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Each taxpayer involved in this transaction should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the transaction is completed. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representative.

Sincerely,

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Lewis K Brickates  
Chief, Branch 4  
Associate Chief Counsel (Corporate)